

**THE REPUBLIC OF UGANDA**  
**IN THE SUPREME COURT OF UGANDA AT KOLOLO**  
**Coram: Opio-Aweri; Mwondha; Tibatemwa-Ekirikubinza;**  
**Muhanguzi; Tuhaise; JJ.SC**  
**Civil Application No. 02 of 2021.**  
**(Arising out of Civil Appeal No. 7 of 2020)**

**Crane Bank Limited (In Liquidation)..... Applicant**  
**versus**

**1. Sudhir Ruparelia**

**2. Meera Investments Limited ..... Respondents**

**Ruling of Court**

This application was brought under Rules 2 (2), 42, 43 & 44 of the Judicature (Supreme Court Rules) Directions SI 13-11.

The orders sought by the Applicant are that:-

1. The Applicant be granted leave to amend the memorandum and record of appeal by substitution of Crane Bank Limited (In Receivership) with Crane Bank Limited (In Liquidation).
2. Provision be made for the costs of this application.

The grounds upon which the application is based, are that:-

1. Bank of Uganda took over the management of Crane Bank Limited under the Financial Institutions Act ("FIA") on 20<sup>th</sup>

October 2016 and subsequently progressed it into receivership on 24<sup>th</sup> January 2017.

2. On 15<sup>th</sup> November 2020, Bank of Uganda placed Crane Bank Limited under liquidation and ordered the winding up of its affairs under the FIA.
3. The liquidation of Crane Bank Limited has progressed.
4. It is in the interests of justice and necessary for the disposal of the appeal that the correct capacity in which Bank of Uganda is managing and controlling Crane Bank Limited and its assets and liabilities be stated.

### **Representation**

Mr. Joseph Byamugisha and Mr. Albert Byamugisha from M/S J. B. Byamugisha Advocates represented the Applicant. Mr. Peter Kabatsi, Mr. Joseph Matsiko, Mr. Elison Karuhanga, Mr. Jet Tumwebaze and Mr. Bruce Musinguzi from M/S Kampala Associated Advocates represented the Respondents.

### **Background**

A brief background to the application is that on 20<sup>th</sup> October, 2016, Bank of Uganda (BOU) took over the statutory management of Crane Bank Limited (CBL) under Sections 87 (3) and 88 (1) (a) of the Financial Institutions Act (FIA). During the process of statutory management, BOU called for bids to purchase the assets and liabilities of CBL. On 20<sup>th</sup> January 2017, CBL was placed under receivership. Its assets and liabilities were sold to DFCU Bank in five days, on the 25<sup>th</sup> January, 2017.

After the sale of the assets and liabilities of CBL, the 1<sup>st</sup> Respondent together with Meera Investments Ltd were sued by the Crane Bank Limited (In Receivership) *vide* High Court Civil Suit No. 493 of 2017. The Respondents raised preliminary objections through *High Court Miscellaneous Application No. 320 of 2017, Sudhir Ruparelia & Meera Investments Limited versus Crane Bank Limited (In Receivership)*; that the plaintiff had no *locus* to file the suit; that the suit did not disclose a cause of action against the Respondents; and that it was barred in law against them. The High Court sustained the preliminary objections, dismissed *HCCS 493 of 2017*, and ordered that the costs of the suit be paid by BOU. RJR

Dissatisfied with the High Court ruling, Crane Bank Limited (In Receivership) filed *Civil Appeal No. 252 of 2019* in the Court of Appeal which was dismissed. Crane Bank Limited - (In Receivership) then appealed against the decision of the Court of Appeal by filing *Civil Appeal No. 7 of 2020* pending before this Court. Crane Bank Limited (In Receivership) also filed *Supreme Court Miscellaneous Application Nos. 32 and 33 of 2020 against Sudhir Ruparelia and Uganda Registration Services Bureau (URSB)*, for temporary and interim injunctions respectively against the 1<sup>st</sup> respondent, to prevent him from claiming, taking control, repossessing or in any way interfering with the management of the applicant or of the receiver and secondly, to restrain the 1<sup>st</sup> Respondent from registering any resolutions with URSB concerning the applicant, pending hearing and determination of the Appeal. The application for interim injunction was dismissed with costs on 9<sup>th</sup> November 2020.

On 15<sup>th</sup> November 2020, BOU issued a public notice in the Sunday Vision newspaper to the effect that it had placed CBL under liquidation and ordered the winding up of its affairs.

The 1<sup>st</sup> Respondent in turn filed *Supreme Court Miscellaneous Application Nos. 39 and 40 of 2020* against Crane Bank Limited (In Receivership) and BOU seeking interim and temporary injunctions respectively to stop BOU from placing/continuing with the liquidation process. The interim injunction application was dismissed on 22<sup>nd</sup> December 2020.

In the current application, Crane Bank Limited (In Liquidation), referred to as "the Applicant", is seeking leave to amend the memorandum and record of appeal by substitution of Crane Bank Limited (In Receivership) with Crane Bank Limited (In Liquidation). KWA

The parties filed written submissions as briefly set out below.

### **Submissions for the Applicant**

Counsel for the Applicant submitted that the Applicant is still a licenced financial institution under resolution under the Financial Institutions Act No. 2 of 2004 (FIA), and BOU has never revoked its licence; that it remains a financial institution under resolution that has been taken through statutory management, receivership and liquidation provisions respectively of the FIA. Counsel referred this Court to the notice to the public annexed as 'O' to the affidavit in support of the application where BOU directed all other borrowers of the Applicant whose loans were not transferred to DFCU Bank to service their loans by paying into the designated

collection accounts held in BOU. He argued that this is part of the residual financial institution business which is being carried out by the Applicant under the supervision and management of the Bank of Uganda as statutory liquidator.

Counsel submitted that it is necessary for the disposal of the appeal that the capacity in which bank of Uganda is managing and controlling CBL and its assets and liabilities be stated.

### **Submissions for the Respondents**

Counsel for the Respondents made lengthy submissions which, in brief, were that the liquidation of the Applicant is illegal for numerous reasons, including that to grant the application would be perpetuating an illegality reliance on which would render the appeal nugatory and negate the Respondents' gains in the lower courts.

He argued that the Applicant is no longer a financial institution following its being placed under statutory management and receivership and so, she cannot be liquidated; that, for those reasons, the Applicant should not be allowed to amend and substitute the Receiver for the Liquidator, an illegal entity. He contended that the proposed substitution of Crane Bank Limited (in Receivership) with Crane Bank Limited (in Liquidation), following a finding by the lower courts that a Receiver has no power to sue or be sued under the FIA, would render the issues under the pending appeal moot and academic, since, the Liquidator, unlike the Receiver, has powers to sue or be sued under the law. According to Counsel, the application is an abuse of court process and an attempt to render the decision of this Court in the

pending appeal nugatory; and that, since the Receiver and the Liquidator are two distinct entities, allowing the application would abate the appeal.

Counsel cited numerous authorities and laws regulating amendment of pleadings and substitution of parties. He submitted that the instant application is intended to clothe the Applicant with capacity to sue and deprive the Respondents of the statutory defence that a bank under receivership has no capacity to sue. He concluded that the application does not meet the criteria for amendment and substitution of parties; that it is an attempt by the Applicant to circumvent the issue on appeal; and that it should accordingly be dismissed with costs.

### **Submissions in Rejoinder for the Applicant**

The Applicant, in rejoinder, wondered why the Respondents should be concerned about the appeal being rendered nugatory when they were not the appellants in the pending appeal. It was also contended for the Applicant that CBL remained a financial institution under the FIA while it was under receivership; that it remains so until when BOU revokes her licence; that there is no such thing as corporate status of a Receiver or Liquidator under the FIA; and that termination of the former would not mean that there is nothing to put under liquidation.

It was further submitted for the Applicant that there is no interchange or substitution regarding the name of the Applicant; that the Applicant is Crane Bank Limited (CBL), that the substitution of the words "In liquidation" for "In receivership" was in order to reflect the true status of Crane Bank Limited; that the

party appealing remains the same, that is, Crane Bank Limited; that the grounds of appeal in the pending appeal remain the same; and that this Court will determine the appeal whether the defence is real or not.

### **Consideration of the application**

We have noted from the submissions that the words "receiver" and "liquidator", are at some points used to refer to Crane Bank Limited (In Receivership) or Crane Bank Limited (In Liquidation) respectively; and also that the Applicant in this application is stated to be Crane Bank Limited (In Receivership) or Crane Bank Limited (In Liquidation), at some points interchangeably.

Before delving into the merits of this application, it is necessary to state the status of each party, since general use of the said words or phrases interchangeably could lead to misrepresentations of fact, hence giving raise to serious legal implications that may prejudice or affect the merits of this application. RAT

Without delving into the merits, and without prejudice, based on the facts, the face of the record, the background of this application, and the entire record, it is our understanding that the Receiver and Liquidator of Crane Bank Limited is Bank of Uganda (BOU); that Crane Bank Limited (In Receivership) was the plaintiff in *High Court Civil Suit No. 493 of 2017* and a respondent in the appeal pending before this Court, while Crane Bank Limited (In Liquidation) is the Applicant in this application.

We now proceed to consider the merits of the application.

The submissions from both sides dwelt at length on the illegalities or otherwise of placing the Applicant under liquidation. The instant application however concerns amendment of pleadings by way of substitution of parties, and this is what we will address. The submissions on illegalities or otherwise of the liquidation of the Applicant will only be addressed to the extent that they are relevant to this application.

It is stated for the Applicant in ground (iv) of the Notice of Motion, and in paragraph 22 of the supporting affidavit, that it is in the interests of justice for the disposal of the appeal that the correct capacity in which BOU is managing and controlling CBL and its assets and liabilities be stated. The Respondents maintain in their submissions, however, that the Applicant has not demonstrated that this application meets the criteria for court to exercise its discretion for allowing an amendment. vra

The principles for the exercise of the court's discretion to grant an amendment of pleadings were stated by this Court in **Gaso Transport Services (Bus) Ltd versus Martin Adala Obene SCCA No. 4 of 1994 [1990-1994] 1 EA 88** where it was held that:-

*"a) The amendment should not work injustice to the other side. An injury which can be compensated by the award of costs is not treated as an injustice.*

*b) Multiplicity of proceedings should be avoided as far as possible and all amendments which avoid such multiplicity should be allowed.*

*c) An application which is made mala fide should not be granted.*



d) *No amendment should be allowed where it is expressly or impliedly prohibited by any law "limitation of action."*

The foregoing principles are also well embedded in the decision of the case of **Central Kenya Limited versus Trust Bank Limited [2000] 2 EA 365** which we find persuasive, where it was held that:-

*"a party is allowed to make such amendments as may be necessary for determining the real question in controversy or to avoid a multiplicity of suits, provided there has been no undue delay, that no new or inconsistent cause of action is introduced, that no vested interest or accrued legal right is affected and that the amendment can be allowed without injustice to the other side."*

We have addressed the criteria and principles laid down by this Court as stated above regarding this Court's exercise of its discretion to grant leave to amend. VRA

The gist of the instant application, as deduced from the Notice of Motion, paragraphs 22 and 23 of the supporting affidavit, and annexure S to the supporting affidavit, is that the memorandum of appeal and the record of appeal be amended by substitution of Crane Bank Limited (In Receivership) with Crane Bank Limited (In Liquidation).

The first criteria set out by this Court in **Gasu Transport Services (Bus) Ltd versus Martin Adala Obene (supra)**, is that the amendment should not work injustice to the other side; and an injury which can be compensated by the award of costs is not treated as an injustice.

The Applicant's evidence, as contained in paragraphs 12 and 13 of the supporting affidavit, together with its annexures G, H and I, show that the appeal hinges on the capacity of the Appellant (Crane Bank Ltd (In Receivership)) to sue as Receiver. The decision of the lower courts, against which Crane Bank Ltd (In Receivership) filed the appeal pending before this Court, is that the Receiver, unlike the Liquidator, has no such powers to sue or be sued under the FIA.

The appeal therefore evolves around issues of the powers or capacity of the Receiver to sue or be sued under *High Court Civil Suit 493 of 2017*. This application seeks to substitute Crane Bank Ltd (In Receivership) with Crane Bank Ltd (In Liquidation) in the Memorandum of Appeal and Record of Appeal. The application therefore, in essence, seeks to change the status of the Appellant (Crane Bank Limited (In Receivership)) from the initial status of being in receivership to that of being in liquidation (Crane Bank Limited (In Liquidation)).

This would, no doubt, circumvent the gist of the main appeal and render it not only nugatory, but also moot and academic. There would therefore be no purpose in pursuing the appeal anymore once the amendment is allowed.

We have considered the Applicant's submissions in rejoinder that the Respondents, not being the Appellant in the pending *Civil Appeal No. 7 of 2020*, should not be concerned if the appeal is rendered nugatory. We are not persuaded by the submission since, by the appeal being rendered nugatory, all the Respondents' claims under the suit would come to naught. Even the question of

costs would not arise since, by allowing the amendment, all the issues and claims under the main appeal would be overtaken by events by virtue of the appeal being rendered nugatory and hence, moot and academic. This would definitely prejudice the Respondents and cause them injustice since they will be deprived of the fruits of success in the event of the appeal being resolved in their favour.

Secondly, for court to grant an amendment, it should consider that multiplicity of proceedings should be avoided as far as possible, and all amendments which avoid such multiplicity should be allowed.

As already noted, the amendment by substitution of parties seeks to cover not only the memorandum of appeal, but also the record of appeal.

The record of appeal contains all the pleadings, judgment, and the record of proceedings from the lower courts (High Court and Court of Appeal). Thus, in essence, the Applicant wants this Court to amend the entire court record which contains pleadings, judgments, and record of proceedings. Acquiescing to this application would mean that everywhere Crane Bank Limited (In Receivership) appears, the same should be substituted with Crane Bank Limited (In Liquidation). This would include the two judgments of the lower Courts which are the subject of appeal in *Supreme Court Civil Appeal No. 7 of 2020*. To that extent, much as we agree with the Applicant that the grounds of appeal would remain the same, we have failed to appreciate the Applicant's

submissions that the amendment is not intended to relate back to when the Applicant was under receivership.

In addition, to the extent that the pleadings and evidence in this application show that the question of capacity of Crane Bank Limited (In Receivership) to sue is an issue in controversy and indeed the subject of the pending appeal before this Court, it having been the subject of preliminary objections in the High Court, without delving into the merits of the pending appeal, it is our considered opinion that the substitution of Crane Bank Limited (In Receivership) with Crane Bank Limited (In Liquidation) as a party to the proceedings would potentially lead to additional proceedings from the Respondents who were the successful parties in the lower Courts. This is based on the fact that the amendment would, by implication, overturn the gist of the decisions of the lower courts even before the appeal is heard and determined on the merits. WJA

Further, there is nothing in the application or the record suggesting that the names of the parties in the pleadings prior to this application were captured in error. It is not for this Court to interfere with the pleadings and decisions of the lower court which were not entered in error. This matter is at the last appellate stage. What remains to be heard is the appeal. In our considered opinion, the issue in controversy which are the grounds of appeal can be attended to without the amendment.

Thirdly an application which is made *mala fide* should not be granted.

The Respondents' argument in this application is that the Applicant, despite being aware of the lower courts' decision that she, as a Receiver has no right to sue, went ahead and filed a second appeal; that by now seeking to amend and substitute crane Bank Limited (In Receivership) with Crane Bank Limited (In Liquidation) she is circumventing the appeal. The Applicant however argues that the amendment is necessary in order to show the status under which BOU is currently managing the affairs of the Applicant; that the party appealing and the grounds of appeal remain the same; that no new or inconsistent cause of action is introduced; that no vested interest or accrued legal right is affected; and that the amendment can be allowed without injustice to the other side.


WAT

We agree with the Applicant that, as a matter of fact, as deduced from paragraphs 20, 21 and 22 of the Applicant's supporting affidavit, the liquidation of the Applicant is in progress (albeit that it is challenged by the respondent); and that the grounds of appeal remain the same. However, based on the nature of the appeal, it would be a naive approach to take the Applicant's line of argument that because the party appealing and the grounds of appeal remain the same, no new or inconsistent cause of action is introduced; or that no vested interest or accrued legal right is affected; or that the amendment can be allowed without injustice to the other side.

The very nature of the amendment sought would definitely fundamentally change and alter the cause of action. The main appeal pending before this Court evolves around the powers of the Receiver to sue under *High Court Civil Suit 493 of 2017*. The

findings of the lower courts, against which an appeal is pending before this Court, is that the Receiver, unlike the Liquidator, has no such powers to sue and be sued under the FIA.

The appeal is thus based on the capacity of the Receiver to sue or be sued. The very nature of the amendment sought, of substituting Crane Bank (In Receivership) with Crane Bank (In Liquidation), would no doubt pre-empt or pre-determine the main appeal in favour of the Appellant and to the prejudice of the Respondents without hearing the latter's defence. It would also erode the gist of the appeal and alter the nature of the pleadings or cause of action.

In **Abdul Karim Khan versus Mohamed Roshan [1965] EA 289 (C.A)** the court laid down the principle that courts will not permit an amendment that is inconsistent with original pleading and entirely alters the nature of the defence or plaint. 

Amendments are made for the purpose of determining the real issues in controversy between the parties. The courts have since held that amendments should have the effect of assisting the court in resolving the issues before it.

In **Joseph Ochieng & 2 Others versus First National Bank of Chicago, Civil Appeal No. 149 of 1991 [1995] eKLR**, the Court of Appeal in Kenya accepted the principles laid out in **Bullen & Leake & Jacobs Precedents of Pleading 12<sup>th</sup> Edition**, as follows:-

*"The ratio that emerges out of what was quoted from the said book is that powers of the court to allow amendment is to determine the true, substantive merits of the case; amendments should be timeously applied for; power to so amend can be exercised by the*

*court at any stage of the proceedings (including appeal stages); that as a general rule, however late, the amendment is sought to be made it should be allowed if made in good faith provided costs can compensate the other side; that the proposed amendment must not be immaterial or useless or merely technical; that if the proposed amendments introduce a new case or new ground of defence it can be allowed unless it would change the action into one of a substantially different character which could more conveniently be made the subject of a fresh action; that the plaintiff will not be allowed to reframe his case or his claim if by an amendment of the plaint the defendant would be deprived of his right to rely on Limitation Acts." (emphasis added).*

We find this authority persuasive to the circumstances of this application where the proposed amendments if allowed would change the action into one of a substantially different character which could more conveniently be made the subject of a fresh action. RAN

Crane Bank (In Receivership), as seen from grounds 4-7 of the appeal (annexure S to the supporting affidavit), is challenging the lower courts' holding regarding the powers of Crane Bank Limited (in Receivership) to sue. In our considered opinion, the Applicant's seeking to substitute Crane Bank Ltd (In Receivership) with Crane Bank Limited (in Liquidation) in the pending appeal, well knowing that the issues in the same appeal evolve around the power of an entity under receivership to sue or be sued, cannot be seen to have been done in good faith. The application, in our considered opinion, is made *mala fide*, to deny the Respondents their defence at appeal that a bank under receivership has no capacity to sue.

Fourthly, no amendment should be allowed where it is expressly or impliedly prohibited by any law, that is, "limitation of action."

The record shows that both the High Court and the Court of Appeal found that the Crane Bank Limited (In Receivership) is barred by the FIA from suing. All the filed documents in this application state the Applicant to be Crane Bank Limited (In Liquidation), except the Applicant's Written Submissions and Authorities filed in this Court on 17<sup>th</sup> February 2021 which state the Applicant to be Crane Bank Limited (In Receivership). We note that the Applicant, in the submissions in rejoinder, stated at page 5 that:-

*"We apologize most sincerely for the error in the submissions of stating the Applicant to be in Receivership. That was an error in typing which proof reading did not capture. There was no intention to mislead and we apply to the Court to allow us to put the record straight in this rejoinder."*

There is no doubt therefore that the Applicant in this application is Crane Bank Limited (In Liquidation). The suit and the appeal from which this application arises, and all other matters arising from the same suit and appeal, were filed by Crane Bank Limited (In Receivership). This is well appreciated, considering that it reflects the *de facto* status of the parties as at the time of filing the respective matters.

It was submitted for the Applicant that the amendment was applied for as soon as Crane Bank Limited was put in liquidation; that apart from substituting (In Liquidation) for (In Receivership), the party appealing remains the same, that is, Crane Bank Limited; that all the grounds of appeal remain the same, and no new or



inconsistent cause of action is introduced, no vested interest or accrued legal right is affected and the amendment can be allowed without injustice to the other side.

The Applicant also contends that even in the case of the death of a party, rule 81 (2) of the Rules of this Court provide that the legal representative can be made party in place of the deceased; that in this case the party is not dead; that the party appealing remains the same, but under management and control of BOU in a different capacity, that is from receivership to liquidation. According to the Applicant, it is a misconception on the part of the Respondents to submit that the Appellant was not a party in the High Court and the Court of Appeal. The Applicant in that connection maintains that the party in lower courts and in this Court is not the Receiver, but rather, it is Crane Bank Limited that is one and the same party differently managed and controlled by BOU. VRA

With respect, we do not agree with the Applicant that Crane Bank Limited (In Receivership) is the same as Crane Bank Limited (In Liquidation), or that the party in the lower courts is Crane Bank Limited. Under the law, Crane Bank Limited (in Receivership), Crane Bank Limited (in Liquidation), and Crane Bank Limited can never be one or the same entity, and can never enjoy the same status. While Crane Bank Limited was a functional financial institution operating under the Companies Act and the FIA, Crane Bank Limited (in Receivership) and Crane Bank Limited (in Liquidation) are entities that emerged out of processes of receivership and liquidation respectively under the management of BOU, which processes could lead to eventual winding up of Crane Bank Limited. Their having evolved from Crane Bank

Limited through the said processes does not necessarily mean that they are the same, in a legal perspective.

There is a distinction between a company which is a going concern, a company under receivership or a company under liquidation.

The said entities are not synonymous with one another. Regarding Crane Bank Limited (in Receivership) and Crane Bank Limited (in Liquidation) which are the point of focus in this application, even if it was the same person or institution holding the two offices (or phases?), as the Applicant argues, they are different entities, each enjoying a distinct and separate status under the laws regulating companies and financial institutions in Uganda. Their rights, powers and obligations are not necessarily similar. They are different in function and nature. VRS

The Applicant relied on the authority of **Stapleford Finance Limited (As Substituted) versus Peter Lavelle and Irish Bank Resolution Corporation Limited (In Special Liquidation)**, Civil Appeal No. 339 of 2015, where the Court of Appeal of Kenya dismissed an appeal of the lower court and allowed the substitution of the respondent as the sole plaintiff in the proceedings. The court relied on Order 17 rule 4 of the Rules of the Superior Courts in Kenya.

The principle applied by that court, which we find persuasive, is that the substitution of a party during the course of proceedings can only be allowed if there is no injustice rendered. The Judge in that case cited the case of **BUPA Ireland Ltd versus Health Insurance Authority & Others [2005] IEHC 291** at page 10 where Pearl J, stated that:-

(1) *"In matters of procedure and rules applicable, I would be of the school of thought that the rules exist so that things can be done rather than so that things can be prevented from being done. That school of thought has been encapsulated very well in my view almost one hundred years ago, when in **Coles v Ravenshear [1907] 1 KB 1**, it was put in this way that:*

*'the relation of rules of procedure to the work of justice is that of handmaid rather than mistress and the court should not be bound by rules to do what would cause injustice in a particular case.'*

*...the principle can be equally valid today that no rule of procedure should, for the sake of strict adherence to it in a slavish way, permit an injustice to be rendered!"(emphasis added).*

Thus, while it may be appropriate under the rules of procedure to substitute parties to reflect phases or processes those parties may have undergone during litigation, as well reflected in rule 81 of the Rules of this Court, it would, in our opinion, defeat justice if such substitution alters the cause of action or completely changes the gist of the appeal, which would consequently culminate into an injustice to the other party. The question of capacity of Crane Bank Limited (In Receivership) is an issue of controversy in the pending appeal. To introduce Crane Bank Limited (In Liquidation) as a substitute to Crane Bank Limited (In Receivership) would therefore be introducing a new cause of action, which we cannot allow.

It is our considered opinion that, in the given circumstances, by allowing the amendment, we would introduce the issue of liquidation which is alien to the subject of the appeal, since the said

appeal only challenges the lower courts' decision that Crane Bank (in Receivership) has no powers to sue or be sued under the FIA. This, of essence, would also infer that the amendment has nothing to do with assisting this Court in resolving all the grounds of appeal.

The Applicant has submitted to this Court that that the amendment is simply to show the management of the bank.

Annexure O to the Applicant's supporting affidavit, a "notice to the public", states in part, that:-

*"Bank of Uganda (BoU) took over management of Crane Bank Ltd (CBL) on October 20, 2016 and subsequently progressed it into receivership on January 24, 2017.*

*In exercise of its powers under section 99 (1) & (2) of the Financial Institutions Act 2004, BoU has now placed CBL, under liquidation and ordered the winding up of its affairs.*

*The Central Bank shall be the liquidator of CBL.*

*....."*

This shows that there is already public notice of who is managing the Crane Bank Limited. The question is, can this public notice be necessarily adopted by this Court for purposes of the appeal pending before this Court?

The Applicant avers in paragraph 16 of the affidavit in rejoinder that the appeal is not concerned with the liquidation of the Applicant. Yet, the very nature of the application seeks to introduce Crane Bank Limited (In Liquidation) to the pending appeal, which in effect introduces a new party to the appeal, more

so, a party which was non-existent at the time of the filing of the suit. In such a situation, no substitution should, by all standards, be allowed.

Moreover, the substitution of an entity in receivership with that in liquidation in the appeal would, taking into account the gist of the pending appeal, not assist this Court to resolve issues on the legality and lapse of the receivership and the power of the receiver to sue, which are the subject of the appeal. If anything, the amendment of the appeal by way of substitution of the said parties or entities will fundamentally affect the appeal even before it is heard.

In any case, since the appeal was filed by Crane Bank Limited (In Receivership) at the time when Crane Bank (In Liquidation) was non-existent, it is only prudent that the appeal proceeds under the same parties, and no prejudice will be occasioned. The Applicant's concern of reflecting the capacity in which BOU is managing and controlling Crane Bank Ltd in the pending appeal can be effectively addressed by indulging court to put the changed status on record at the commencement of the hearing, after which the hearing would proceed as filed by the parties initially.

Thus, for reasons given above, and based on the applicable law and the adduced evidence on record, this application is dismissed with costs to the Respondents.

Dated at Kampala this ...12<sup>th</sup>...day of ...August... 2021.

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**Rubby Opio-Aweri**  
**Justice of the Supreme Court**

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**Faith Mwendha**  
**Justice of the Supreme Court**

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**Lillian Tibatemwa-Ekirikubinza**  
**Justice of the Supreme Court**

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**Ezekiel Muhanguzi**  
**Justice of the Supreme Court**

.....

**Percy Night Tuhaise**  
**Justice of the Supreme Court**